

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BYSHOP ELLIOTT

Plaintiff,

vs.

**ATTORNEY DECLARATION
OF PATRICK J. MACKEY**

Civil Action No. 17-cv-00397-WKS

BUFFALO CITY SCHOOL DISTRICT and
CRYSTAL BOLING-BARTON, McKinley
High School Principal, in her official and individual
capacities,

Defendants.

PATRICK J. MACKEY hereby declares pursuant to U.S.C. § 1746(2), under penalty of perjury, that the following is true and correct:

1. I am an attorney admitted to practice before the Courts of the State of New York and the Western District of New York, and I am engaged in the practice of law with Lipsitz Green Scime Cambria LLP, attorneys for Defendant, Crystal Boling-Barton (“Mrs. Boling-Barton”).

2. This declaration is submitted in support of Mrs. Boling-Barton’s motion for an order granting her leave to file an amended answer pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. A copy of the proposed *Amended Answer to Complaint with Crossclaims* (“Amended Answer”) is attached hereto and made a part hereof as **Exhibit A**.¹ Through the Amended Answer, Mrs. Boling Barton seeks to add crossclaims against Defendant, Buffalo City School District, for indemnification and contribution.

¹ Pursuant to Rule 15(b) of the Local Rules of Civil Procedure for the United States District Court for the Western District of New York, the proposed Amended Answer attached as Exhibit A is provided in “redline” format to indicate the changes made from the original Answer to Complaint.

3. As the Court is aware, this matter was commenced by the filing of the Plaintiff's Summons and Complaint on or about May 10, 2017. A true and correct copy of the Complaint is attached hereto and made a part hereof as **Exhibit B**. The Summons and Complaint were served upon Mrs. Boling-Barton on June 21, 2017.

4. In the Complaint, Plaintiff, a student at McKinley High School in Buffalo, brings causes of action pursuant to 20 U.S.C. § 4071 and 42 U.S.C. § 1983. Plaintiff's causes of action are based upon allegations that the Buffalo City School District and Mrs. Boling-Barton, as Principal of McKinley High School, failed to allow students to form a Gay-Straight-Alliance club.

5. Mrs. Boling-Barton filed her Answer to Complaint on July 19, 2017. A true and correct copy of the Answer to Complaint is attached hereto and made a part hereof as **Exhibit C**. In her Answer, Mrs. Boling-Barton denies all of the critical allegations set forth in the Complaint.

6. No discovery has been conducted in this matter. In fact, a Scheduling Order has not yet been implemented and a scheduling conference has not yet been conducted. As such, the matter is still in the preliminary stages of litigation.

7. Mrs. Boling-Barton makes this motion at this time because of the determination by her attorneys that she is entitled to indemnification and contribution from the Buffalo City School District pursuant to, among other things, New York State statutory law.

8. As Mrs. Boling-Barton is entitled to statutory indemnification and contribution, it would be appropriate for this Court to grant her leave to file the *Amended Answer* in order to allow her to bring crossclaims against Buffalo City School District for said relief. (See ¶¶ 59 to 62 to Exhibit A.)

9. The Buffalo City School District would not be prejudiced if Mrs. Boling-Barton is granted the leave requested because, as mentioned above, the matter is in the preliminary stages

of litigation and no discovery has been conducted. Thus, the Buffalo City School District will have a full opportunity to conduct discovery to defend itself against Mrs. Boling-Barton's crossclaims.

10. Furthermore, although it appears that the Plaintiff and Buffalo City School District have agreed to settle the case between them, Buffalo City School District has not yet been dismissed from this case. Thus, as explained in the accompanying Memorandum of Law, this Court has jurisdiction over Buffalo City School District and, therefore, it is permitted to allow Mrs. Boling-Barton to pursue her crossclaims against the Buffalo City School District.

11. Accordingly, in order to allow Mrs. Boling-Barton to protect her interest, she should be permitted to file the Amended Answer to bring indemnification and contribution crossclaims against Buffalo City School District. Such crossclaims will benefit her in the event it is ultimately determined that the Plaintiff is entitled to a judgment in his favor.

12. Mrs. Boling-Barton has not previously amended her pleadings.

WHEREFORE, Defendant, Crystal Boling-Barton, respectfully requests that this Court enter an Order: (i) granting her motion for leave to file the proposed *Amended Answer to Complaint with Crossclaims*; and (ii) granting such other and further relief that it deems is just and appropriate.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of September, 2017, at Buffalo, New York.

/s/ Patrick J. Mackey
Patrick J. Mackey, Esq.